

# Notice of Allowability

Application No.

10/015,631

Examiner

Tuan V. Nguyen

Applicant(s)

KUHNS ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to July 16, 2007.
2. ☒ The allowed claim(s) is/are 1 and 7 now renumbered as 1-2.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Mr. Brian Tomko (Reg. No. 41,349) on September 14, 2007.
3. Claims have been changed to yield as follow:
  1. (Cancelled)
  - 2-17. (Cancelled)
  18. (Currently Amended) The device of claim 4- 25, wherein the plurality of fasteners are aligned with respect to the longitudinal axis of the elongate hollow member.
  19. (Currently Amended) The device of claim 4-25, further comprising:  
an engaging member disposed at least partially with the elongate hollow member, the engaging member configured to engage at least the proximal end of the distal-most fastener of the plurality of fasteners.

20. (Previously Presented) The device of claim 19, wherein the engaging member comprises a shoulder that is configured to engage at least the proximal end of the distal-most fastener of the plurality of fasteners.

21. (Currently Amended) The device of claim 26, wherein the moving member comprises a piercing tip.

22. (Previously Presented) The device of claim 21, wherein the moving member is configured to be disposed within the elongate hollow member when the moving member is in a first position and wherein the piercing tip of the moving member is configured to be disposed outside the elongate hollow member when the moving member is in a second position.

23. (Cancelled)

24. (Cancelled)

25. (Currently Amended) The device of claim 26, further comprising an elongate hollow member having a longitudinal axis, and wherein the moving member and the elongate member are at least partially disposed within the elongate hollow member.

26. (Previously Presented) A delivery device for delivering a plurality of fasteners, said delivery device comprising:

a handle;

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a drive and indexing mechanism having proximal and distal ends, the driving and indexing mechanism operatively associated with the handle and comprising a moving member, having a sharp distal end for piercing tissue, and an opposing elongate member spaced transversely from the moving member to define a passageway therebetween, the drive and indexing mechanism being configured to receive a plurality of fasteners arranged along the passageway between the moving member and the opposing member, each of the plurality of fasteners having a proximal end and a distal end, the moving member and the opposing elongate member being moveable proximally and distally with respect to the handle and with respect to each other for delivering and indexing the fasteners along the passageway; and

an actuator having at least two sequential positions, a first position wherein the moving member has been moved distally relative to the handle to pierce tissue, and a second position wherein the moving member has been moved proximally relative to the handle for completing the deployment within tissue of the distal end of a distal-most fastener from the passageway.

#### ***Reasons For Allowance***

4. Claims 18-22 and 25-26 are allowable over prior art of record.

The following is an examiner's statement of reasons for allowance: The prior art of record does not appear to disclose or suggest a motivation to combine A delivery device for delivering a plurality of fasteners, said delivery device comprising:

a handle;

a drive and indexing mechanism having proximal and distal ends, the driving and indexing mechanism operatively associated with the handle and comprising a moving member, having a sharp distal end for piercing tissue, and

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an elongate member spaced transversely from the moving member to define a passageway therebetween, the drive and indexing mechanism being configured to receive a plurality of fasteners arranged along the passageway between the moving member and the opposing member, each of the plurality of fasteners having a proximal end and a distal end, the moving member and the elongate member being moveable proximally and distally with respect to the handle and with respect to each other for delivering and indexing the fasteners along the passageway; and

an actuator having at least two sequential positions, a first position wherein the moving member has been moved distally relative to the handle to pierce tissue, and a second position wherein the moving member has been moved proximally relative to the handle for completing the deployment within tissue of the distal end of a distal-most fastener from the passageway.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan V. Nguyen  
September 14, 2007

  
**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**  
*9/17/07.*